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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/008,947	01/20/1998	RANDELL L. MILLS	911322US	6830
7590	11/16/2004		EXAMINER	
FARKAS & MANELLI 2000 M STREET, N.W. 7TH FLOOR WASHINGTON, DC 200363307			KALAFUT, STEPHEN J	
		ART UNIT	PAPER NUMBER	
		1745		

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

M62

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/008,947	MILLS, RANDELL L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stephen J. Kalafut	1745	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on 14 October 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see body of action.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s). 10/14/2004.

10.  Other: see attached PTO-892.

An appeal under 37 CFR 1.191 was filed in this application on 10/14/2004. Appellant's brief is due on 12/14/2004 in accordance with 37 CFR 1.192(a).

Applicant's arguments filed 10/14/2004 have been fully considered but they are not persuasive.

Applicant argues that the examiner has miscalculated the energy levels predicted by the applicant's theory, because energy is transferred to a catalyst in amounts of  $m \times 27$  eV, where  $m$  is an integer. This is not persuasive because in order to accept such amounts, the hydrogen atom must be able to give energy in these same amounts, some of which do not fit into the alleged energy levels of a hydrogen atom, as theorized by applicant.

Applicant points out that the reasons for Balmer line broadening are discussed in many articles, and that the observed broadening is in excess in what can be expected from known sources thereof. This is not persuasive because broadening may be caused by various means including those taken into account by applicant, and those not taken into account. In the enclosed article by Luggenhölscher *et al.*, broadening equivalent to that found by applicant, shown in figure 1, is accounted for by conventionally known explanations such as the Stark effect. The enclosed article by Luque *et al.* accounts for H $\alpha$  broadening using two Lorentzian mechanisms (Stark and Van der Waals) and two Gaussian mechanisms (Doppler and instrumental).

Applicant argues that the release of energy from hydrogen to form lower states thereof is the source of the energy for a hydrogen-argon plasma. This is not persuasive because it does not take into account the tendency of atomic hydrogen to recombine into molecular hydrogen, which

would release energy. The attachments from applicant also indicate an additional energy source, such as a heater or a microwave generator.

Regarding applicant's arguments concerning the Appendix of Dr. Souw, attached to the Office Action of 11/6/2003, please see the presently attached Appendix.

Since the mailing of the previous Office Action, applicant's attachments A, C, D, G, H, I, J, K, M, N, O, P, Q, R, 50-56, 60, 77, 81 and 101-107 have either been submitted or located from being previously submitted.

Attachments 102, 103 and 105-107 fall into category (1) of the Final Rejection of 4/5/2004, as being not pier reviewed.

Attachments 53 and 56 fall into category (2) of the Final Rejection, as not dealing with the hydrino, but with other subject matter.

Attachments 50, 101 and 104 fall into category (3) of the Final Rejection, as containing data contrary to applicant's theory.

Attachments 51, 52, 54, 55, 60, 77, 81, 103 and 105 fall into category (4) of the Final Rejection, as speculating hydrino formation for data not necessarily caused by hydrinos.

Attachments A, C, D, G, H, I, J, K, M, N, O, P, Q and R fall into category (6) of the Final Rejection, as being unrelated to the scientific merits of the present invention.

Since all the "evidence" presented in these attachments falls into to at least one of the categories as stated in the Final Rejection, they are all deemed to be incredible, and thus invalid as experimental proof for the existence of the hypothetical hydrino, or a fuel cell based thereon.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sjk

STEPHEN KALAFUT  
PRIMARY EXAMINER  
GROUP 1700